

REMARKS

A. Overview

The Examiner is thanked for the courtesies extended to the applicant's attorney in the telephone conference with the Examiner. During this conference, the applicant's attorney and the Examiner clarified some issues relating to the restriction requirement, and the applicant's attorney and the Examiner discussed the disclosure of the invention. No claims were discussed during the discussion.

In this response, the applicant seeks to address all of the issues raised by the Examiner in the official action of 15 December 2004.

B. Response to Restriction Requirement/election of Species

In the official action, the Examiner imposed a restriction requirement on the applicant. In this restriction requirement, the Examiner requested that the applicant elect between a pair of species, and several sets of sub-species.

The Examiner first requested that the applicant elect between the species of Group I, which related to an anesthesia device for a single gas line (Figures 1-4, 7-10, 12, 14-16); and the species of Group II, which related to an anesthesia device for the dual gas line (Figures 1B-10B).

The applicant hereby elects the anesthesia device for a dual gas line of Group II (Figures 1B-10B).

The applicant was advised that a listing of all claims that were readable on the elected species should be included within this restriction. To that end, the applicant submits that all of claims 1-33 read on the second species, the anesthesia device with a dual gas line (Figures 1-B-10B).

In paragraph 5 the applicant was required to elect a sub-species, but only if the applicant originally elected the first specie. As the applicant did not elect the first specie, the election of the sub-species set forth in paragraph 5B official action is believed by the applicant to be unnecessary.

In paragraph 6 of the official action, the applicant was required, if the applicant elected species 2 (which the applicant did) to further elect one of the following sub-species:

1a. Vent: Figures 1B-3B and 5B; or sub-specie 1b: One-way valve: Figures 8B-10B.

With respect to this election requirement, the applicant hereby elects the sub-specie of Group II.1a. - - the vent: Figures 1B-3B and 5B. The applicant believes that the following claims are readable upon this sub-species. Claims 1-12, 19, 21, 24-28 and 30.

In paragraph 7, the applicant was further required to elect one of the following two sub-species, either sub-species 2a, relating to a T-shaped exhaust connector (Figure 9B); and sub-specie 2B, relating to a Y-shaped exhaust connection.

In this regard, the applicant hereby elects the sub-specie of Group II.2a, relating to the T-shaped exhaust connector: Figure 9B. In this regard, the applicant believes that the following claims read on this sub-species: Claims 1-4, 9-18, and 20-33. Interestingly, the sub-species of Group II.2b relating the Y-shaped exhaust connector also reads on these identical claims.

Finally, the applicant was required to elect one embodiment of the elbow tube (16a or 16b) and one embodiment of the exhaust tube (49 ab or 52 ab) from the disclosed Figures 11 and 13.

As discussed with the Examiner, the applicant does not believe that the elbow tube or the particular exhaust tube used is crucial to the invention, and is largely a matter of sizing and personal preference with the user. Additionally, I do not believe that any of the claims

currently in the case are specifically directed to either of the exhaust tubes or elbow tube.

Nonetheless, to the extent that any election has any particular relevance, the applicant hereby elects the elbow tube of 16a, and the exhaust tube 49 ab.

With the above elections, the applicant submits that all of the elections required by the Examiner have been made. However, because of the multi-level nature of the restriction requirement, the Examiner's indulgence is respectfully requested if this election is not fully responsive.

C. Amendments to Claims.

With this response, the applicant has also taken the liberty of amending some of the claims. In making these amendments, the applicant believes that the amendments made were not limiting, but rather, clarifying. For example, when the claims were written, it was believed by the applicants that the claims were clear in their recitation of the fact that although a vent existed, there was no restriction as to whether the vent was part of the facemask, or part of some other component. Upon a further review of the claims, the applicant noticed that the claims may have been subject to an interpretation wherein the vent would be required to be a part of the facemask.

With this response, the applicant has amended the claims to more clearly recite that the vent need not be a part of a facemask.

When reviewing the amendments of the claims, the Examiner's attention is directed in particular to the "formatting" of the claims. To aid in this clarification process, the formatting changes were made to the claims, which did not necessarily result in either words being added or removed from the claims. Nonetheless, these formatting changes were made,

as they do help to remove some ambiguity, such as the ambiguities discussed above relating to whether the vent is part of the facemask or not (for which there is no requirement).

D. Amendments to Specification.

In paragraph 11, the Examiner objected to the abstract, because it was too long. In this amendment, the applicant has amended the abstract, so that it now does not exceed 150 words in length. Additionally, legal phraseology such as that often used in patent claims has been avoided.

In paragraph 12, the Examiner objected to the specification because it failed to provide a proper description of the disclosed Figures 5 and 6.

In this amendment, the applicant has amended the application several places to now provide a proper description of disclosed Figures 5 and 6. For example, the applicant has amended the brief description of the drawings, at page 12. Further, the applicant has amended the first paragraph on page 14, the first full paragraph on page 15, and the first line on page 16 to include appropriate references relating to Figures 5 and 6. Finally, the applicant has amended the first full paragraph on page 18 to include a recitation relating to Figures 5 and 6.

With these amendments, the applicant believes that the Examiner's objections lodged in paragraph 12 have been addressed, thereby overcoming the Examiner's objections.

In paragraph 13, the Examiner raised some "technical errors". The applicant has amended the penultimate line on page 15 to address the applicant's issues relating to Figure 8 reading on Figure 1. Additionally, the applicant has amended the first line of page 27, to now recite that the appropriate figure is Figure 7B, rather than Figs. 8B and 9B.

With these changes, the applicant believes that the Examiner's objections lodged in paragraph 13 have been overcome.

At paragraph 14, the Examiner objected to the specification because it failed to provide a proper antecedent basis for the claimed subject matter of claim 33. With this amendment, the applicant has amended the specification to overcome this objection. In particular, the Examiner's attention is directed to the amendments made at page 14, line 3, to page 16, line 5. The underlying subject matter in the sentence that begins "Among the scenting materials" is material that provides this desired antecedent basis. The applicant submits that this underlying material does not constitute new matter, as it comprises little more than the disclosure already contained in claim 33. As such, no new matter other than that which already existed in the application has been added by this amendment.

E. Response to Claim Objections.

In paragraph 18, the Examiner objected to claim 33 because the disclosure failed to address claimed subject matter. With the amendments made above, relating to the Examiner's objections lodged in paragraph 14 of the response, the applicant believes that he has overcome the Examiner's objection to the claim lodged in paragraph 15 of the response.

F. Conclusion/Request for Extension of Time.

Applicant believes that the present application as amended is in condition for allowance and it is respectfully requested that the Examiner so find and issue a Notice of Allowance in due course.

If necessary, Applicant requests that this Response be considered a request for an extension of time for a time appropriate for the response to be timely filed. Applicant

requests that any required fees needed beyond those submitted with this Response be charged to the account of E. Victor Indiano, Deposit Account Number 50-1590.

Respectfully submitted,

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